

1 JOHN GUNSALUS

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2 Q. Okay. Can you get any closer in time to that
3 without speculating?

4 A. It would be safe to say between one and three
5 minutes.

6 Q. The 50 to 70 people that you testified about
7 who were there who were kind of loud, had that noise
8 completely abated by the time you approached
9 Mario Franco?

10 A. Yes, sir, for the most part, yes, sir.

11 Q. Did they run, did they walk, did they do
12 something else, the 50 to 70 people to leave the scene?

13 A. A lot of people ran. A lot of people walked.
14 A lot of people drove off in the vehicles, and once the
15 vehicles left, a lot of the loud music left with them.

16 Q. So in the one to three minutes, had the noise
17 level diminished completely?

18 A. Not completely, but very drastically.

19 Q. It was still kind of noisy?

20 MS. GARVEY: Objection.

21 A. Not where you couldn't hear us giving verbal
22 commands.

23 BY MR. LICHTMACHER:

24 Q. How far away were you from Mario Franco when
25 you allege you gave the verbal commands?

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2 A. I would say approximately 15 to 20 feet.

3 There were still some people there.

4 Q. And there was still some noise there?

5 A. Yes, sir.

6 Q. And he was facing the car?

7 A. Yes, sir.

8 Q. "Franco immediately spun around to face this
9 officer where he did grab this officer by my upper
10 uniform sleeves. Franco stated, 'Let go of me. What
11 you doing? Let go of me. I'm telling you to let go of
12 me.'"

13 You have that as a quote in your document.

14 Does that mean it's exactly what he said or close to
15 exactly what he said?

16 A. It's close to what he exactly said.

17 Q. When is the first time you wrote that down?

18 A. When I proceeded to do this report.

19 Q. How long was that after the incident on the
20 street with Mr. Franco?

21 A. I honestly could not tell you.

22 Q. Was it days, hours?

23 A. No, sir. It was that morning. It was
24 shortly after this.

25 Q. Do you remember what your tour of duty was

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2 A. No, he did not.

3 Q. What did you do when he did not follow your
4 command?

5 A. I approached Mario from his right side and
6 placed my hand on his back and he had a loose T-shirt
7 and I ordered him to put his hands behind his back.

8 Q. Did you tell him he was under arrest at that
9 point?

10 A. Yes.

11 Q. After you grabbed him by the back of his
12 shirt and told him he was under arrest and asked him to
13 put his hands behind his back, what did he do?

14 A. He immediately spun around on myself and
15 tried to get away from me and we both grabbed each other
16 by the shirt sleeves -- upper shirt sleeves by the
17 biceps area.

18 Q. Explain to me how he was trying to get away
19 from you.

20 A. He was trying to back peddle and trying to
21 pull away from me.

22 Q. Correct me if I'm wrong, but I believe you
23 testified that after you grabbed him by the back of his
24 shirt, that he spun around?

25 A. Correct.

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2 A. It's small. It's probably six inches. About
3 that big (indicating).

4 Q. Did you ever use your baton that night?

5 A. No, I did not.

6 Q. Can you explain how Mario Franco ended up
7 from the driver's side area of the vehicle to the back
8 of the vehicle?

9 A. Mario was aggressively pushing me and we
10 ended up going backwards out of the roadway to the rear
11 portion of the Cadillac due to Mario's aggressive
12 actions.

13 Q. What did you do in response to his actions?

14 A. At that point in time, after giving several
15 verbal commands to stop resisting and put his hands
16 behind his back, as well as Officer Kelly giving him
17 verbal commands and trying to break his grasp, at that
18 point in time I delivered one closed-fist strike to the
19 left side of his face.

20 Q. Prior to striking him on the left side of his
21 face, was he still resisting?

22 MR. LICHTMACHER: Object to the
23 form, Ms. Garvey.

24 MS. GARVEY: I'll rephrase it.

25 MR. LICHTMACHER: It's been asked,

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so you know what the answer is going to
be.

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MS. GARVEY: I don't think I asked
him anything about actively resisting.

6

MR. LICHTMACHER: You just
suggested what was going on.

8

BY MS. GARVEY:

9 Q. Prior to striking him in the left side of his
10 head, how would you characterize how he was resisting?

11 A. He did not comply with this officer's
12 commands to put his hands behind his back and instead he
13 decided that he would first attempt to flee; and then
14 secondly, he decided to become the aggressor and
15 physically challenge the officer instead of complying
16 with myself and Shawn Kelly's verbal commands to put his
17 hands behind his back and stop resisting.

18 Q. After you struck Mario Franco in the left
19 side of his face, what happened?

20 A. Mario lost his balance and went to the
21 ground.

22 Q. I believe you also indicated that there was
23 another strike to Mario Franco; is that correct?

24 A. Yes.

25 Q. How did that occur?

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2 A. As he went down, I went down with him and I
3 struck him in the midsection of his stomach area.

4 Q. Was that an intentional strike?

5 A. It was unintentional, but I made contact, so
6 I included it as a strike to his midsection.

7 Q. When you say it was unintentional, what do
8 you mean by that?

9 A. I was trying to catch myself as well.

10 Q. When Mario Franco fell to the ground after
11 you first struck him, what position did he land in?

12 A. He was on his back.

13 Q. Did you feel the need to get him in a
14 different position?

15 A. Yes.

16 Q. Why?

17 A. Because he was unable to be handcuffed
18 because he was laying on his back. He has to have his
19 hands behind his back in order to be handcuffed.

20 Q. What position did you intend to put him into?

21 A. Prone position with his chest and stomach
22 down against the pavement.

23 Q. Did Officer Kelly assist you with that?

24 A. Yes. He began to.

25 Q. He began to?

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2 person," it says, "person type" "AR," and I see
3 Mario Franco's name, the race is black; is that correct?

4 A. Correct.

5 Q. Ethnicity "N"; is that "Negro"?

6 A. No, non-Hispanic.

7 Q. Thank you. Sex is "male." Date of birth we
8 have. We have his age, height, weight. How did you get
9 his weight or did you generate what his weight was?

10 A. I honestly don't know.

11 Q. Then you have an address 506 West Seneca, is
12 that his home address at that time?

13 A. That must have been an address that he gave
14 at that time.

15 Q. And then his Social Security number.

16 Underneath that, it says, "Refused orders to
17 disperse/resisted arrest." Did you type that in or is
18 that part of the form?

19 A. I typed that in.

20 Q. Did he obstruct government administration
21 that evening?

22 A. He could have somewhat. I just didn't put
23 the charge.

24 Q. That was your choice, correct?

25 A. Yes.

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2 Q. Moving down, it says "case status, closed."

3 What does that mean?

4 A. It's closed due to arrest.

5 If you have a burglary and you don't know who
6 the suspect is or you're waiting for fingerprints, it
7 would be an open case.

8 Q. "Lab submission request," right-hand corner

9 "N." Is that "not applicable" or something else?

10 A. "No."

11 Q. That's convenient.

12 Next page. These three charges, who chose
13 these three charges?

14 A. I did.

15 Q. Disorderly conduct, correct?

16 A. Correct.

17 Q. Harassment in the second, and that's a
18 violation, harassment; is that correct?

19 A. Correct.

20 Q. And "resisting arrest" is a misdemeanor,
21 correct?

22 A. Correct.

23 Q. And that comes with a potential one-year
24 sentence in prison, correct?

25 A. Correct.

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2 are violations. I realize they're considered petty
3 offenses, but just to be comprehensive, I'll say
4 "crimes."

5 MS. GARVEY: Sure.

6 BY MR. LICHTMACHER:

7 Q. So now, do you know if any other officers
8 reported the alleged crimes to the DA of Mario Franco
9 the night of July 5th, 2016, or the morning -- 2014?

10 A. Are you talking about other reports regarding
11 Mario?

12 Q. Yes.

13 A. Shawn Kelly might have done a report. It's
14 called a 19. It's a supplemental report. I'm sure he
15 did one.

16 Q. Do you know if Shawn Kelly testified at the
17 criminal trial of Mario Franco?

18 A. Yes, he did.

19 Q. Did you come together with him to testify at
20 that trial?

21 A. Do you mean -- can you rephrase that, please?

22 Q. Did you guys travel together to testify at
23 the criminal trial of Mario Franco?

24 A. No, sir.

25 Q. Did you meet with the DA before you testified

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1 reviewed paperwork that you generated?

2 A. No.

3 Q. Did you consult with him -- withdrawn.

4 You generated paperwork regarding the arrest

5 of Mario Franco, correct?

6 A. Correct.

7 Q. You also testified in his criminal trial,

8 correct?

9 A. Correct.

10 Q. Are you aware of the result of that criminal

11 trial?

12 A. Yes, sir.

13 Q. What is the result?

14 A. He was found innocent.

15 Q. Were you the person who signed off --

16 withdrawn. You generated paperwork and forwarded it to

17 the DA in that case?

18 A. Yes, sir.

19 Q. And you consulted with the DA in that case?

20 A. Yes, sir.

21 Q. Is it fair to say you reported the alleged

22 crimes to the DA in that case?

23 A. Yes.

24 Q. I'm using the term "crimes" even though some

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3 offenses, but just to be comprehensive, I'll say
4 "crimes."

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2 at Mario Franco's trial?

3 A. Yes, sir.

4 Q. Who was there with you?

5 A. It was Jarrett Woodfork.

6 Q. Who is that?

7 A. He is from the District Attorney's Office.

8 He was the prosecuting attorney.

9 Q. Was Officer Kelly with you when you spoke to
10 Mr. Woodfork?

11 A. Yes.

12 Q. So he was in the room with you when you spoke
13 with him?

14 A. I believe so, yes.

15 Q. The three of you spoke at the same time about
16 the trial that was coming up?

17 A. Yes.

18 Q. You had an idea what he was going to say; is
19 that fair to say?

20 A. That's fair.

21 Q. And he had an idea what you were going to
22 say?

23 A. Yes.

24 Q. And the DA was okay with the three of you
25 being in a room together? He didn't say we can't do